

Personal instead of Institutional Power

Maxim Timofeev

2020-01-20T11:12:54

In his annual address to the Russian Parliament on January 15th, 2020, the Russian President announced the contours of a constitutional reform. He stressed that there was no need to adopt a new constitution and formulated the main points related to the amendments. Despite the vagueness and uncertainty of the amendments and their proposed procedure of adoption, a preliminary analysis is possible. In this blog post, we will briefly summarise and analyse the proposed constitutional changes and share our views on its procedural aspects.

Magnificent seven?

The President announced seven constitutional amendments.

He linked the first block of amendments to strengthening the sovereignty of the Russian state (which is a figure of speech, rather than the real rationale for these amendments), through:

- the primacy of the Constitution over international law and decisions of international bodies, and
- stricter requirements for the candidates for the higher official posts, including the Presidency (dual citizenship etc.).

The second block concerned the reconfiguration of political institutions. It has been proposed to:

- include in the Constitution the provisions on the status of the State Council (as of now, it is a non-constitutional advisory body chaired by the President that includes mostly the heads of Russian regions);
- shift the powers in relation to forming the Government from the President to the State Duma (lower chamber of the Parliament);
- bring the state and municipal authorities within the “unified system of public authority” (as of now, constitutionally they are considered to form two separate systems).

The last block of amendments concerned apex courts. It has been proposed to:

- provide for new grounds to remove the judges of the Russian Constitutional and Supreme Court from office;
- grant the Constitutional Court powers to review the constitutionality of the bills before the latter may become laws.

Short and Obscure, but Obvious?

The plan of a constitutional change was, and still to a large extent is, short and obscure. The President did not explain what prompted the proposed changes and what particular constitutional aims they would help to achieve.

At first glance, the proposed amendments are multidirectional and lack any solid constitutional idea that bundles them up. Moreover, a lot of them are not novel at all, and some of them have been implemented already, however not at the constitutional level. For instance, the idea of the primacy of the national law over international, as framed in the President's address, has been embodied in a number of the Constitutional Court's decisions starting from 2015.

We suggest that the full list of amendments should not distract us from looking into the core of the proposal – the reconfiguration of central institutions. What links these amendments is the tendency to constitutionally distance the Russian system from European ones, and the attempt to strengthen personal, rather than institutional power. Pointing at the weakening of the President's power to form a government and the constitutionalisation of the State Council, many argue that this showcases Putin's intention to copy the Kazakh model, and constitutes the necessary move to prepare for 2024 when Putin's term of office as the President expires. It is also clear that possible options to meet this need are kept open and the final draft of amendments may include proposals that have not yet been voiced.

Fundamental principles, and how to change them

However uncertain and vague, the scope of the suggested amendments is such that it concerns the fundamental principles enshrined in [Chapter 1](#) and [2](#) of the Russian Constitution. For instance, the intention to make the State Council a constitutional institution contradicts Article 11 that enumerates the bodies that “exercise the state power” – the President, the Parliament, the Government, and the courts. The suggestion to create the “unified system of state authority” runs counter to the Article 12 provision that states that “the bodies of local self-government shall not be part of the system of bodies of state authority”.

The Russian Constitution [prescribes](#) that the proposal to amend provisions of Chapters 1 or 2 should be supported by a qualified majority of members of both chambers of the Russian Parliament. In case the Parliament supports the proposal, it has to dissolve and a special body (Constitutional Assembly) should convene. The latter may either decide to leave the Constitution in force or draft a new Constitution.

Obviously, this procedure is highly burdensome, lengthy and uncertain because three different bodies may veto the process. The situation is further complicated by the fact that the law regulating the status of the Constitutional Assembly has never been adopted in Russia. However, entrenched constitutional provisions are there for a reason, namely safeguarding the most fundamental provisions of the Constitution from situational and arbitrary change.

This brings us to our next point, namely, the way the proposed amendments were announced, and the manner in which they are supposed to crystallise into constitutional provisions are highly controversial, given their scope and nature.

Out of the Blue Straight into the Constitution

The [Venice Commission](#), an authoritative advisory body of the Council of Europe that provides legal advice on constitutional matters, [opined](#) that the procedures of constitutional change should not be “open to controversy”, “applied too hastily” and “without democratic discourse”, because any of these “may undermine ... the legitimacy of the constitution itself”. In the present Russian context, the amendment procedure is tainted by all three: starting with the obvious intention to circumvent the existing procedures and finishing with the idea to conduct the public vote on amendments.

The amendments proposed by the President caught everybody by surprise. They were hardly the result of a public debate, and there was no White, or Green Paper. If anything, the proposal was “Out-of-the-Blue” Paper. The surprise effect was further multiplied by the chosen procedure and timeline.

The working group on the amendments that was established the same day is neither a professional, nor a representative body. It includes 75 members of the public among which politicians, members of the parliament, scholars and public figures. However, the scholars are few, mostly representing management in academia, and in any case outnumbered by theatre directors, actors, writers, musicians, and athletes. The vast majority of members of the working group either represent the “United Russia” party that has majority in the Parliament, or are personally loyal to the President.

In addition, the proposed timeline is disturbing. It was revealed that the amendments are supposed to be framed and submitted to the Parliament within a couple of months, and by the end of Spring they are supposed to pass the public vote.

Such an inadequate time frame and rubberstamp-type working group are hardly prone to allowing any space for proper [“debate of controversial issues”](#). The public vote does not change this assessment. Given the haste and control over mass media, the public vote is nothing but a confirmation vote.

A “Back-in-the-USSR” legitimacy tool kit

Notwithstanding the President’s attempts to convince the public otherwise, the scope and the procedure of the constitutional amendments are not driven by pressing social needs or popular aspirations. As the latest developments show, Russian people are interested in effective means to decide who holds public offices, not in abstract shifting of competences between different authorities. Russian people are interested in an effective system of human rights protection, not in the primacy of the Constitution over international law. Russian people are interested in being included

in the decision-making process, not in being involved in a superficial confirmation vote over constitutional amendments.

The proposed amendments offer nothing in this regard. Their gist is to cement the power of Vladimir Putin once he leaves the office, and to make this in a safe, controlled environment. The latter aim cannot be achieved within the boundaries established by the Constitution. Thus, the constitutional requirements are thrown into the litter bin of necessity. However, circumventing formal procedures still calls for a sort of justification. That is why the proposed plan relies on substitutes that would mask its deficiencies. And nothing seems to work better than a good old “back-in-the-USSR” legitimacy tool kit of direct public approval and facade “representative” bodies.

